

JONES VARGAS
300 E. Second Street, Suite 1510 - P.O. Box 281
Reno, NV 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

MOLLY MALONE REZAC, ESQ.
Nevada Bar No. 007435
JUSTIN J. BUSTOS, ESQ.
Nevada Bar No. 010320
JONES VARGAS
300 East Second Street
Suite 1510
Reno, NV 89501
Tel: (775) 786-5000
Fax: (775) 786-1177
E-Mail: mrezac@jonesvargas.com
jbustos@jonesvargas.com

Of Counsel:

JAMES B. MONROE, ESQ.
JUSTIN J. HASFORD, ESQ.
FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER, LLP
901 New York Avenue, NW
Washington, DC 20001-4413
Tel: (202) 408-4000
Fax: (202) 408-4400

Attorneys for Plaintiff Ferring B.V.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FERRING B.V.,)	Case No.:
)	
Plaintiff,)	
)	
v.)	<u>COMPLAINT FOR PATENT</u>
)	<u>INFRINGEMENT</u>
APOTEX, INC.)	
)	
and)	
)	
APOTEX CORP.,)	
)	
Defendants.)	
)	

1 Plaintiff Ferring B.V. (“Ferring”), by way of Complaint against Defendants Apotex Inc.
2 and Apotex Corp. (collectively “Apotex”), alleges as follows:

3 **THE PARTIES**

4 1. Ferring is a corporation organized and existing under the laws of the Netherlands
5 with its corporate headquarters at Polaris Avenue 144, 2132 JX Hoofddorp, The Netherlands.
6 Ferring is engaged in the research, development, manufacture and sale of pharmaceutical
7 products.

8 2. Upon information and belief, Apotex Inc. is a corporation organized and existing
9 under the laws of Canada, having a principal place of business at 150 Signet Drive, Weston,
10 Toronto, Ontario, Canada M9L 1T9.

11 3. Upon information and belief, Apotex Corp. is a corporation organized under the
12 laws of the State of Delaware, and its principal place of business is located at 2400 North
13 Commerce Parkway, Suite 400, Weston, Florida 33326. Upon information and belief, Apotex
14 Corp. is a wholly-owned subsidiary of Apotex Inc.

15 **NATURE OF THE ACTION**

16 4. This is an action for infringement of United States Patent Number 7,947,739 (“the
17 ’739 patent”), arising under the United States patent laws, Title 35, United States Code, § 100 *et*
18 *seq.*, including 35 U.S.C. §§ 271 and 281. This action relates to Apotex Inc.’s filing of an
19 Abbreviated New Drug Application (“ANDA”) under Section 505(j) of the Federal Food, Drug
20 and Cosmetic Act (“the Act”), 21 U.S.C. § 355(j), seeking U.S. Food and Drug Administration
21 (“FDA”) approval to market generic tablets containing 650 mg tranexamic acid (“Apotex’s
22 generic tranexamic acid tablets”).

23 **JURISDICTION AND VENUE**

24 5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

25 6. Upon information and belief, this Court has jurisdiction over Apotex Inc. Upon
26 information and belief, Apotex Inc. is in the business of manufacturing, marketing, importing and
27 selling pharmaceutical drug products, including generic drug products. Upon information and
28

1 belief, Apotex Inc. directly, or through its wholly-owned subsidiaries, including Apotex Corp.,
2 manufactures, markets and sells generic drug products throughout the United States and in this
3 judicial district, and this judicial district is a likely destination of Apotex's generic tranexamic
4 acid tablets.

5 7. Upon information and belief, this Court has jurisdiction over Apotex Corp. Upon
6 information and belief, Apotex Corp. directly, or indirectly, manufactures, markets and sells
7 generic drug products, including generic drug products manufactured by Apotex Inc., throughout
8 the United States and in this judicial district. Upon information and belief, Apotex Corp.
9 purposefully has conducted and continues to conduct business in this judicial district.

10 8. Upon information and belief, venue is proper in this judicial district under 28
11 U.S.C. §§ 1391(c) and (d), and § 1400(b).

12 **COUNT FOR PATENT INFRINGEMENT**

13 9. The U.S. Patent and Trademark Office ("PTO") issued the '739 patent on May 24,
14 2011, and the '739 patent expires on March 4, 2025. The '739 patent claims, *inter alia*,
15 tranexamic acid tablet formulations. Ferring is the owner of the '739 patent. A copy of the '739
16 patent is attached as **Exhibit A**.

17 10. Ferring Pharmaceuticals AS is the holder of New Drug Application ("NDA") No.
18 02-2430 for tranexamic acid tablets, which the FDA approved on November 13, 2009. The '739
19 patent is listed for NDA No. 02-2430 in the FDA's Approved Drug Products with Therapeutic
20 Equivalence Evaluations ("the Orange Book").

21 11. Ferring sells 650 mg dosage strengths of tranexamic acid tablets in the United
22 States under the trademark Lysteda®.

23 12. Upon information and belief, Apotex Inc. filed with the FDA ANDA No. 202286,
24 under Section 505(j) of the Act, 21 U.S.C. § 355(j).

25 13. Upon information and belief, Apotex Inc.'s ANDA No. 202286 seeks FDA
26 approval to sell in the United States generic tranexamic acid tablets containing 650 mg of
27 tranexamic acid intended to be generic versions of Lysteda®.
28

1 14. On May 26, 2011, Ferring received a letter from Apotex Inc., dated May 23, 2011,
2 purporting to be a Notice of Certification for ANDA No. 202286 (“Apotex’s notice letter”) under
3 Section 505(j)(2)(B)(ii) of the Act, 21 U.S.C. § 355(j)(2)(B)(ii), and 21 C.F.R. § 314.95(c).

4 15. Apotex’s notice letter alleges that Apotex Inc. has submitted to the FDA ANDA
5 No. 202286 seeking FDA approval to sell in the United States generic tranexamic acid tablets
6 containing 650 mg of tranexamic acid intended to be generic versions of Lysteda®.

7 16. Under 35 U.S.C. § 271(e)(2)(A), Apotex Inc. has infringed at least one claim of
8 the ’739 patent by submitting, or causing to be submitted to the FDA, ANDA No. 202286
9 seeking approval for the commercial marketing of Apotex’s generic tranexamic acid tablets
10 before the expiration date of the ’739 patent.

11 17. Upon information and belief, ANDA No. 202286 seeks approval of Apotex’s
12 generic tranexamic acid tablets that are the same, or substantially the same, as Lysteda®.

13 18. Upon information and belief, Apotex’s generic tranexamic acid tablets will, if
14 approved and marketed, infringe at least one claim of the ’739 patent.

15 19. Upon information and belief, Apotex Inc. will, through the manufacture, use,
16 import, offer for sale and/or sale of Apotex’s generic tranexamic acid tablets, directly infringe,
17 contributorily infringe and/or induce infringement of at least one claim of the ’739 patent.

18 20. Upon information and belief, Apotex Inc.’s actions relating to ANDA No. 202286
19 complained of herein were done with the cooperation, the participation, the assistance of, and at
20 least in part for the benefit of, Apotex Corp.

21 **WHEREFORE**, Plaintiff Ferring respectfully requests that the Court enter judgment in
22 its favor and against Defendants Apotex Inc. and Apotex Corp. on the patent infringement claims
23 set forth above and respectfully requests that this Court:

- 24 1) enter judgment that, under 35 U.S.C. § 271(e)(2)(A), Apotex has infringed
25 at least one claim of the ’739 patent through Apotex Inc.’s submission of ANDA No.
26 202286 to the FDA to obtain approval for the commercial manufacture, use, import, offer
27
28

1 for sale and/or sale in the United States of Apotex's generic tranexamic acid tablets
2 before the expiration of the '739 patent;

3 2) order that the effective date of any approval by the FDA of Apotex's
4 generic tranexamic acid tablets be a date that is not earlier than the expiration of the '739
5 patent, or such later date as the Court may determine;

6 3) enjoin Apotex from the commercial manufacture, use, import, offer for
7 sale and/or sale of Apotex's generic tranexamic acid tablets until the expiration of the
8 '739 patent, or such later date as the Court may determine;

9 4) enjoin Apotex and all persons acting in concert with Apotex from seeking,
10 obtaining or maintaining approval of Apotex Inc.'s ANDA No. 202286 until the expiration
11 of the '739 patent;

12 5) declare this to be an exceptional case under 35 U.S.C. §§ 285 and
13 271(e)(4) and award Ferring costs, expenses and disbursements in this action, including
14 reasonable attorneys fees; and

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

6) award Ferring such further and additional relief as this Court deems just and proper.

DATED this 8th day of July, 2011.

JONES VARGAS

/s/ Molly Malone Rezac
MOLLY MALONE REZAC, ESQ.
JUSTIN J. BUSTOS, ESQ.
300 East Second Street, Suite 1510
Reno, NV 89501
Tel: (775) 786-5000
Fax: (775) 786-1177

Of Counsel:

JAMES B. MONROE, ESQ.
JUSTIN J. HASFORD, ESQ.
FINNEGAN HENDERSON FARABOW
GARRETT & DUNNER, LLP
901 New York Avenue, NW
Washington, DC 20001-4413
Tel: (202) 408-4000
Fax: (202) 408-4400

Attorneys for Plaintiff Ferring B.V.

JONES VARGAS
300 E. Second Street, Suite 1510 - P.O. Box 281
Reno, NV 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

TABLE OF EXHIBITS

Exhibit	Exhibit Description	Pages ¹
A	Copy of the '739 patent	53

JONES VARGAS
300 E. Second Street, Suite 1510 - P.O. Box 281
Reno, NV 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

¹ Exhibit page count is exclusive of exhibit slip sheets.